

CARL H. QUANDT

IBLA 82-1098

Decided October 6, 1982

Appeal from decision of California State Office, Bureau of Land Management, declaring unpatented mining claims abandoned and void. CA MC 28288 through CA MC 28291.

Affirmed.

1. Federal land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claims -- Mining Claims: Recordation

Under Sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located before Oct. 21, 1976, must file a copy of the notice of location and a notice of intention to hold the claim or evidence of assessment work on the claim on or before Oct. 22, 1979, and prior to Dec. 31 of every year thereafter he must file an affidavit of assessment work or a notice of intention to hold the claim. There is no provision for waiver of this mandatory requirement, and where evidence of assessment work is not filed timely because it was delayed in the mail, the statutory consequences must be borne by the claimant.

APPEARANCES: Carl H. Quandt, pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Carl H. Quandt appeals the California State Office, Bureau of Land Management (BLM), decision of July 13, 1982, which declared the unpatented Melee, Melee #1, Melee #2, and Melee #3 lode mining claims, CA MC 28288 through CA MC 28291, abandoned and void because evidence of assessment work or a notice of intention to hold the claims, as required by the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), and 43 CFR 3833.2, had not been filed with BLM on or before December 30, 1981.

Appellant alleges that the required proof of assessment work had been timely and properly filed by being mailed to BLM 2 days prior to the deadline, after it had been recorded in San Bernardino County, California.

The proof of labor was mailed December 29, 1981, and was received by BLM December 31, 1981.

[1] Section 314 of FLPMA, and the implementing regulations, 43 CFR 3833.2-1 and 3833.4, require that evidence of assessment work for each assessment year be filed in the proper office of BLM prior to December 31 of each calendar year, under penalty of a conclusive presumption that the claims have been abandoned if the documents are not timely and properly filed for recordation.

Despite appellant's contention that the document was properly and timely filed by being mailed 2 days prior to the deadline, the regulations define "file" to mean "being received and date stamped by the proper BLM office," 43 CFR 1821.2-2(f), 43 CFR 3833.1-2(a). Thus, even if the mailing were prevented by Postal Service error from reaching the BLM office timely, that fact would not excuse appellant's failure to comply with the cited regulations and statute. Charles A. Behney III, 63 IBLA 231 (1982); Prudential Mining and Exploration, Inc., 60 IBLA 363 (1981); Philip Cramer, 57 IBLA 386 (1981). The Board has repeatedly held that a mining claimant, having chosen the Postal Service as his means of delivery, must accept the responsibility and bear the consequences of loss or untimely delivery of his filings. Don Chris A. Coyne, 52 IBLA 1 (1981); Edward P. Murphy, 48 IBLA 211 (1980). The mailing of evidence of annual assessment work before the due date is not sufficient to comply with the requirement of the statute unless the document is actually received by the proper BLM office on or before such date. Marcia G. Stuck, 60 IBLA 197 (1981). Filing is accomplished only when a document is delivered to and received by the proper BLM office. 43 CFR 1821.2-2(f). Appellant may wish to consult with BLM concerning the possibility of relocating these claims.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Douglas E. Henriques
Administrative Judge

We concur:

Anne Poindexter Lewis
Administrative Judge

James L. Burski
Administrative Judge

